



MARK BORN

STATE REPRESENTATIVE • 39TH ASSEMBLY DISTRICT

Testimony on Assembly Bill 676 *Assembly Committee on Corrections* *January 9, 2018*

Chairman Schraa and members of the Assembly Corrections Committee,

Thank you for allowing me to testify in favor of Assembly Bill 676.

Every individual incarcerated in the state prison system was held in a county jail first. Upon arrest and arrival at a county jail, suspects are often upset, angry, or aggressive. They may also be under the influence of drugs or alcohol, stressed about the crime they allegedly just committed, or suffering from mental illness. County corrections officers are responsible for these individuals, regardless of the risk they pose, as well as their safety and the safety of the facility's other inmates. State prison guards have many of the same responsibilities and are considered protective occupation participants under the Wisconsin Retirement System (WRS), whereas county corrections officers are not.

It is important that the treatment of this occupation under the WRS reflects the challenges and dangers that county corrections officers face on a regular basis. AB 676 classifies county jailers, detention officers, and correctional officers as protective occupation participants under the WRS without the requirement that their principal duties involve active law enforcement, or fire suppression or prevention.

Other legislative proposals to give protective status to county jailers have been introduced for more than 20 years. Law enforcement groups and the Wisconsin Counties Association have always been at odds over this issue, and as a result it has never become law. I took over this proposal from former-Rep. Gary Bies when he retired from the State Assembly in 2014. I have worked ever since then to craft a bill that bridges the gap among stakeholders. Now AB 676 is supported by the Badger State Sheriffs Association, the Wisconsin Sheriffs and Deputy Sheriffs Association, and the Wisconsin Counties Association.

Under AB 676, county jailers would be classified as protective occupation participants and the employees (jailers) would have to pay the additional costs of having protective status. This includes both the employee's and employer's additional WRS contribution, as well as duty disability costs. Current county jailers would have 60 days after enactment of this bill to opt out

of receiving protective status, and new jailers would have the opt-out option at the time they are hired. Some counties currently classify their jailers as protective occupation participants and pay for the additional costs for their employees. Counties with this policy will be grandfathered in under the bill, but those counties retain the ability to no longer pay the additional costs through an action of the county board in the future.

Thank you again for the opportunity to testify in favor of AB 676. I am now happy to answer any questions.



HOWARD MARKLEIN

STATE SENATOR • 17TH SENATE DISTRICT

January 8, 2017 Assembly Committee on Corrections Testimony on Assembly Bill 676

Good Morning!

Thank you Chairman Schraa and committee members for taking the time to hear testimony on Assembly Bill 676, which would allow county jailers to be classified as protected occupation participants under the Wisconsin Retirement System.

Currently, individuals whose principal duties involve active law enforcement, or fire suppression or prevention, and require frequent exposure to a high degree of danger are classified as protective occupation participants under the Wisconsin Retirement System (WRS).

Under current law this classification is extended to state correctional officers and other law enforcement agents. However, it does not apply to all county jailers.

I would encourage you to talk to your local county sheriff and the men and women who go to work every day in your county jail and ask them if their job entails "a high degree of danger or peril." After visiting county jails and talking to my local sheriffs, the answer is a clear "yes."

Individuals who are incarcerated at the state prison first start by being detained at a county facility. Our county correctional officers see the most demanding and dangerous people in our correctional system at the most stressful time. On a daily basis they are tasked with handling people who are aggressive upon their arrest, under the influence of drugs or alcohol, or are suffering from a mental illness. Injuries to county jailers are not uncommon.

In addition to the physical dangers of their job, county jailers also face difficult mental and emotional challenges. In smaller rural communities, county correctional officers may know the victims that were affected by the actions of the criminals they must protect at work. This is not an easy profession.

AB 676 was carefully crafted so that it would not increase costs to county taxpayers. County jailers that are willing to chip in for these benefits should be allowed to do so. Considering that the cost would fall on the employee, the bill provides an opt-out option for officers.

This bill was drafted with input and discussions between the Badger State Sheriffs' Association and the Wisconsin Counties Association. Both organizations support AB 676. The Wisconsin Sheriffs and Deputy Sheriffs Association and AFSCME Council 32 have both added their support for AB 676 as well.


So far this proposal has received bi-partisan support in both houses of the Legislature. I would encourage you to support the bill as well. Thank you for your time. I would be happy to answer any questions about the bill.



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MEMORANDUM

TO: Honorable Members of the Assembly Committee on Corrections

FROM: Kyle Christianson, Director of Government Affairs 

DATE: January 9, 2018

SUBJECT: Support of Assembly Bill 676

The Wisconsin Counties Association (WCA) supports Assembly Bill 676 (AB 676), which classifies county jailers as protective occupation participants under the Wisconsin Retirement System (WRS) and mandates that employees pay the enhanced WRS contributions resulting from the classification. AB 676 represents a negotiated compromise between WCA, the Badger State Sheriffs Association, and the Wisconsin Sheriffs and Deputy Sheriffs Association that addresses the desires of county jailers without forcing additional costs on to county property taxpayers.

In recent years, negotiations have been ongoing between WCA and the law enforcement community regarding protective status for county jailers. The negotiations followed years of litigation regarding protective status for jailers. Counties were successful in the litigation as the Department of Employee Trust Funds (ETF) found that county jailers are not entitled to WRS protective status because a jailer's job is not considered "active law enforcement" under the law.

Through discussions with law enforcement associations, AB 676 was drafted which provides protective status to jailers without regard to their "active law enforcement" status and, therefore, allows jailers to receive duty disability insurance and early retirement. The legislation also clarifies that jailers are not designated as public safety employees for collective bargaining purposes (*i.e.*, they are general municipal employees and may bargain only over base wages) and jailers are responsible for all—employee and employer—additional WRS contributions.

County jailers are critical to ensuring safety in the jail for inmates, staff, and the general public. As such, AB 676 provides jailers with the additional benefits they desire while protecting local property taxpayers. It is anticipated that this legislation will bring an end to all litigation surrounding jailer protective status, thus providing legal certainty for all 71 counties with county jailers.

WCA respectfully requests that the Committee support AB 676.

Please feel free to contact WCA if you need additional information.



To: Members, Assembly Committee on Corrections
From: Badger State Sheriffs' Association (BSSA)
Wisconsin Sheriffs and Deputy Sheriffs Association (WS&DSA)
Date: January 9, 2018
RE: Testimony in Support of AB 676 to Provide Protective Status to County Jailers

Good morning. I am Captain Jeff Klatt of St. Croix County here today with Sheriff Mark Podoll of Green Lake County. I am the legislative committee chair of the Wisconsin Sheriffs and Deputy Sheriffs Association, which represents over 1,000 members, including Sheriffs, Deputies, and jail officers. Sheriff Podoll is the vice president and legislative committee chair for the Badger State Sheriffs' Association, representing all of Wisconsin's 72 Sheriffs. Our organizations have a joint legislative committee and work closely on public safety issues of concern to our members.

We are here today to ask for your support for an important piece of legislation that will provide protective status to county jailers statewide. First, we want to thank Representative Born and Senator Marklein for authoring this bill, which has been years in the making. It is also important to note that our organizations negotiated this legislation with the Wisconsin Counties Association to ensure a balanced policy, providing county jailers with protective status without increasing counties' budgets.

Protective occupation status allows employees to retire at an earlier age (50 years old) and receive duty disability benefits if they are injured in the line of duty. While the job responsibilities are the same, state correctional officers are considered protective status under the Wisconsin Retirement System (WRS), while county jailers are not.

Daily, county jailers are responsible for the safety of county jails and the safety of the facility's other inmates. Since every state inmate starts in a county jail, county jailers regularly deal in dangerous and stressful situations. Inmates initially admitted to the jail are often facing various issues, including mental health, alcohol, and other drug abuse, and dealing with the stress from the crime they committed and potential incarceration. To prepare for their difficult job to work in extremely dangerous conditions, county jailers undergo substantial training requirements.

Currently, individuals whose principal duties (51 percent or more) involve active law enforcement or fire suppression or prevention and require frequent exposure to a high degree of danger are classified as protective occupation participants under the WRS. For years, there has been variability across Wisconsin counties regarding whether protective status is provided to county jailers.

Under the bill, counties can classify county jailers as protective status under WRS without requiring that their principal duties involve active law enforcement. This legislation will give county jailers *the option* to obtain protective status at the time of hire. The additional cost

associated with protective status, including duty disability, is paid for by the employee (county jailer) – with no cost to the county. The bill also defines county jailer, providing more uniformity to the job function and duties statewide.

While protective status will be offered in every county statewide, this bill provides for different circumstances to allow for more county-level flexibility. For instance, if counties currently pay for the additional cost to provide protective status to jailers, those counties are grandfathered in under the bill. A grandfathered county would have the ability in the future to not pay the additional costs if the county so decides. In addition, if a county currently collectively bargains with public safety employees, newly hired county jailers will be able to bargain as public safety employees.

Safety within the jail is the top priority. Without protective status, jailers must work longer careers, while facing the same physically dangerous aspects of the job. For a county jailer in their late 50s or early 60s, dealing with younger inmates can be a significant safety risk. The protective status benefit will afford jailers the opportunity to retire at 50, the same as state correctional officers, thus eliminating their exposure to injury later in their careers.

We respectfully request you support this bill to give county jailers the protective status they deserve for the hard and dangerous work they do to keep Wisconsin safe. Thank you for your time and consideration.



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Remarks to the Assembly Committee on Corrections

2017 Assembly Bill 676

Tarna Hunter, Government Relations Director, Department of Employee Trust Funds

January 9, 2018

Good morning Chairman Schraa and Vice-Chairman Hutton, and members of the Assembly Committee on Corrections. My name is Tarna Hunter, Director of Government Relations for the Department of Employee Trust Funds. With me today is Matt Stohr, Administrator of Retirement Services at ETF. Thank you for the opportunity to appear before this Committee. We are here today to speak for information only on Assembly Bill 676.

As you know, Assembly Bill 676 classifies county jailers as protective occupation participants under the Wisconsin Retirement System without a requirement that their principal duties involve active law enforcement.

The bill would essentially require county jailers who are employed by a county that did not classify county jailers as protective occupation participants on July 1, 2017 and become protective occupation participants under this bill to pay the employer share of the WRS contribution rate, as well as the duty disability rates, which is currently entirely an employer cost.

If the county jailer does not wish to pay the additional cost of being a protective, the bill allows them at the time of hire to be classified as a general. This choice is irrevocable.

The bill also provides that county employers who currently classify their jailers as protectives will continue to pay the employer cost for current and future employees.

We think the policy embodied in the bill is a fairly stark departure from the policy that has been in place regarding protective category participants. We would like to spend a few minutes to make you aware of some of the policy implications for both the employees and employers.

Historically the state has recognized that protective occupation employees are exposed to a high degree of danger and have protected them by providing them an earlier retirement age, a higher retirement benefit, and duty disability insurance benefits. This policy is a recognition that these jobs are dangerous and critical to maintaining public safety and also that those who perform these jobs may not be able to perform them for as long. Under current law, the employer, who is in the best position to do so,

determines whether the particular positions qualify for protective status based upon the specific job duties. This bill changes that policy – it recognizes that jailers should be classified as protective, but require the employee, and not society in general, to pay for these extra protections.

If the employee does not or cannot pay the additional costs, the employee may opt out of the protective category and be classified as a general employee, even though the job duties would be the same.

This creates inequity among employees who are presumably doing the same job, both across the state and in the same jail. For example, some jailers at the same employer may be classified as protectives and some may be classified as generals. This also creates inequities between the counties, allowing some counties to pay for the cost of being protective and other counties to require the employee to pay for the cost of being protective.

While determining whether this is the proper policy is clearly the legislature's prerogative, we are concerned that a policy that no longer requires the duties of the particular job to be the defining element of whether someone enjoys the protections of protective status has implications for the broader class of public safety professionals in general.

There are two main costs associated with the protective occupation category: WRS contribution rates and duty disability rates. Currently, the protective employee pays the same WRS contribution rate as general employees and the employer picks up the rest of the contribution rate. Employees classified as protectives under the bill, would be required to pay the employer share, as well as the duty disability rates, which is currently entirely an employer cost.

For example, if this bill were in effect for 2018, on average in a sampling of 10 counties, county jailers who do not opt out of the protective class under the bill would need to pay 12.86% of salary which includes 10.7% of salary for the WRS contribution and 2.57% of salary for duty disability coverage – instead of the WRS employee rate of 6.7%. However, the specific rate will vary from county to county due to differences in disability rates which are affected by claims experience. 2018 duty disability rates range from 0.23% of payroll to 6.07% of payroll.

To illustrate the effect of the bill, here are three different scenarios that would occur based on county specific information we collected in 2017.

Scenario 1 – County with high duty disability rates.

In Racine County, the annual starting wage was \$35,838 for county jailers, and the duty disability rate was 5.28%. A new hire in Racine County who elected to participate in the WRS as a protective employee would pay a total of \$5,691, or 15.88% of salary.

Scenario 2 – County with low duty disability rates.

For Ozaukee County, the annual starting wage was \$48,568, and the duty disability rate was 0.20%. A new hire in Ozaukee County who elected to participate in the WRS as a protective employee would pay \$5,245, or 10.80% of salary.

Scenario 3 – County classifying employees as protective as of 7/1/17.

The employee would pay the regular employee WRS rate of 6.8% of salary. That would be 9.08% less than the Racine County employee, and 4% less than the Ozaukee County employee.

On the more technical side, there may also be policy implications to the duty disability program. Allowing employees to select whether to be in a job classification and in a disability program or not may change experience in that the older, more likely to be disabled employees may select the program and others wouldn't, thereby increasing the costs to everyone in the long run. Generally, this is typically referred to as adverse selection. An actuarial analysis would be the best way to develop a more detailed impact analysis and fiscal estimate on premiums for the program.

Additionally, there are questions that would need to be worked out about the taxation of duty disability premiums. Federal tax law provides limited exceptions for employers and employees to pay insurance premiums like duty disability on a pre-tax basis. It is unclear if federal law would allow an employee to pay the employer's share and if it did, if it could be pre-tax.

Finally, many of the administrative aspects would be handled by the counties, such as determining what county jailer is or isn't a protective occupation employee for WRS purposes. ETF's fiscal estimate provides you information on the costs these administrative changes would have on ETF.

This bill is a significant change to a long-standing legislative policy regarding the compensation of protective employees. It does raise some equity issues and questions on the long-term impact on the duty disability program. ETF believes that an actuarial analysis would be the best way to determine what impact these changes would have on the programs.

If you have any questions about this testimony, please contact Tarna Hunter at 608-267-0908.